

1 **THE CAVANAGH LAW FIRM**

2 A Professional Association

3 1850 NORTH CENTRAL AVENUE

4 SUITE 2400

5 PHOENIX, ARIZONA 85004

6 (602) 322-4000 – Main Line

7 (602) 322-4008 – Direct Line

8 (602) 322-4104 – Direct Facsimile

9 Hdavis@cavanaghlaw.com

10 Helen R. Davis, SBN 018309

11 IN THE SUPREME COURT

12 STATE OF ARIZONA

13 In re the Matter of:

14 PETITION TO AMEND RULE 74 OF
15 THE RULES OF FAMILY LAW
16 PROCEDURE

Supreme Court Number
R-15-0006

COMMENT TO PROPOSED
AMENDMENT TO RULE 74 RE:
PARENTING COORDINATION

17 I am an attorney in private practice, the current Chair of the Family Law
18 Section of the State Bar, a Certified Specialist in Family Law, and a Fellow of the
19 American Academy of Matrimonial Lawyers. I have served as a Parenting
20 Coordinator (and before that a Family Court Advisor) on multiple occasions, as
21 well. I submit the following comments to the Proposed Amendment to Rule 74
22 because I think the Rule and the amendment are important to the practice of family
23 law in this state. My comments below are organized by subsections of the Rule:

24 74(A). No comment.

25 74(B). I am concerned that parenting coordinators are being used as a
26 substitute for the parents' inability to make joint decisions. That is, rather than
27 awarding sole legal decision-making, a parenting coordinator is appointed.

28 Evaluators and the court frequently find that the parties cannot cooperate, are
29 embroiled in conflict, and/or have serious issues that impact the children's best

1 interests, but go on to recommend/order that the parents share joint legal decision-
2 making with a parenting coordinator in place. A parenting coordinator should not
3 be used to avoid a sole legal decision-making decision when warranted by the facts
4 and the law. Nor should the court appoint a private professional who requires
5 compensation to micro-manage parenting decisions. If a parenting coordinator is
6 put into place, it should be by agreement of the parents and the parenting
7 coordinator's authority should not exceed the interpretation, enforcement and
8 implementation of the existing court orders and/or assisting the parties in reaching
9 consensus. Forcing a parenting coordinator onto the parties where they do not
10 agree to the appointment may be an unconstitutional infringement on the
11 fundamental right to parent as well as a due process concern. I also question
12 whether the court's use of the parenting coordinator to do more, especially if a
13 hearing is not held on objection, is an impermissible shift of the court's authority.
14 *See Christopher K. v. Markaa S.*, 233 Ariz. 297, 298, 311 P.3d 1110, 1111 (App.
15 2013); *DePasquale v. Superior Court*, 181 Ariz. 333, 336, 890 P.2d 628, 631 (App.
16 1995). It appears that one of the reasons the committee was put into place was to
17 address concerns of the public regarding the cost of the parenting coordinator
18 process foisted on them and shifting of authority. I do not see that the current
19 version of the rule resolves these concerns. I have appeared before the court where
20 one of the parties asks the judge to order the parties to private mediation, but the
21 judge has declined that relief with an indication that he/she will not require the
22 parties to enter into a process that requires payment without agreement. This type
23 of ruling is contradicted by the trial court's willingness to do just that with respect
24 to parental decisions.

25 74(C). This subsection allows the parents to agree to the parenting
26 coordinator – if they are stipulating to the appointment, that is acceptable.

1 74(D). No comment.

2 74(E). I do not agree that a parenting coordinator should seek his/her own
3 reappointment without the consent of the parties. This ability could create a self-
4 sustaining and potentially never-ending appointment that should be contrary to a
5 useful parenting coordinator process. I also think the parents should have the
6 ability to agree to discharge the parenting coordinator.

7 74(F)(1). *See* my comments to subsection B. In addition, I do not agree that a
8 parenting coordinator should be appointed where one parent cannot afford the
9 parenting coordinator and the other pays 100% of the fees absent agreement
10 because this could give the appearance of bias.

11 74(F)(2). *See* my comments to subsection B.

12 74(F)(3). I do not agree that a retainer of two times an hourly rate is rational.
13 What will transpire is that the parenting coordinator will not have the ability to do
14 anything of meaning. Where parenting coordinators are currently used to assist in
15 difficult situations, *e.g.*, substance abuse issues, domestic violence, *etc.*, the work
16 requires significant fees and the parenting coordinator, if appointed, should be paid
17 and I think that many qualified professionals will decline appointments with such a
18 limit because their hands will be tied. Moreover, this really goes to the underlying
19 issue of appointing parenting coordinators where people cannot afford them. *See*
20 my comments to subsection B.

21 74(G). No comment.

22 74(H). No comment.

23 74(I). No comment.

24 74(J). No comment.

25 74(K). The parenting coordinator's potential need to access this information is
26 contrary to the limitation on a two-hour retainer. This aspect of the Rule also

1 evidences the potential expense of the process that can be foisted on a parent.
2 Further, the parent may not know or anticipate in advance that the process can
3 become very expensive. *See* my comment to subsection B.

4 74(L). Subsection G says the process is not confidential, but subsection L
5 says the parenting coordinator should not file their report with the court. If a party
6 or the court wants a particular report to be designated as confidential, that can be
7 done at any time. Otherwise, the report should be in the clerk's file. A report that
8 discusses soccer, for example, is not confidential. Further, if objections are filed,
9 they quote or cite the report and/or advocate about the issues found in the report at
10 length without those documents designated as confidential. No part of the file
11 should be summarily confidential unless the court decides such is necessary. One
12 of the other issues here is the need to ensure that the clerk's file is complete for
13 purposes of appeal. Absent a record, the court of appeals is bound to affirm.

14 74(M). No comment.

15 74(N). If a hearing is requested, it should be mandatory that a hearing is held.
16 To do otherwise means the court has impermissibly shifted its authority to the
17 parenting coordinator. Moreover, accepting recommendations of paid
18 professionals, no matter how qualified, without the ability of the parties to be heard
19 on request, creates due process problems. *See* comments to subsection B.

20 74(O). No comment.

21 74(P). No comment.

22 74(Q). No comment.

23 74(R). No comment.

1 RESPECTFULLY SUBMITTED this 27th day of April 2015.

2 THE CAVANAGH LAW FIRM, P.A.

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4 By: Helen R. Davis
5 Helen R. Davis

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